

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOUGLAS E. REED, SR.

Claimant

VS.

CITY OF WICHITA

Respondent

Self-Insured

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Docket Nos. 236,291 &
239,306

ORDER

Respondent appeals from the September 28, 1999, preliminary hearing Order of Administrative Law Judge John D. Clark. The Administrative Law Judge awarded claimant medical treatment, finding that claimant had suffered accidental injury arising out of and in the course of his employment with respondent on April 20, 1998, and that respondent had timely notice of the injury.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on the dates alleged?
- (2) Did claimant provide timely notice of these alleged injuries pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges accidental injury from two separate events. Respondent acknowledges the series of accidents through November 3, 1998, and those are not in contention at this time. The only dispute surrounds an April 20, 1998, alleged date of accident. Claimant testified that on April 20, 1998, while lifting a 105- to 300-pound catch basin, he suffered a sudden pulling sensation in his back. He advised his supervisor, Joseph Chaffin, that he may have pulled something. When asked if he wanted to fill out

an accident report, claimant declined, saying he thought it was just general soreness. Mr. Chaffin testified regarding the conversation with claimant on April 23, 1998, regarding his shoulder. Mr. Chaffin at first stated that nothing was mentioned regarding the neck. However, on cross-examination, Mr. Chaffin stated that he was not sure when it was, but he did recall something to that effect. However, the notes contained in Mr. Chaffin's personal log failed to mention anything about the neck, discussing only the shoulder.

The medical records from the various claimant's doctors, both his own and as a referral from the respondent, are consistent in history. They all discuss claimant lifting in April and again in the fall of 1998 while working for respondent.

In reviewing the medical evidence and the testimony of both claimant and Mr. Chaffin, the Appeals Board finds the preponderance of the credible evidence supports claimant's position that he did suffer accidental injury arising out of and in the course of his employment on April 20, 1998. In addition, the evidence supports claimant's position that he discussed the neck injury with Mr. Chaffin. Mr. Chaffin's testimony, rather than contradicting claimant, ultimately supports claimant's position.

The Appeals Board, therefore, finds for preliminary hearing purposes claimant has proven that he suffered accidental injury arising out of and in the course of his employment on April 20, 1998, and that timely notice under K.S.A. 44-520 was provided to his immediate supervisor.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated September 28, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Jeff Tevis, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director